

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 26, 2008

STATE OF TENNESSEE v. TESSA LEANN SUTTON

Appeal from the Criminal Court for Sevier County
No. 11626 Rex Henry Ogle, Judge

No. E2007-01359-CCA-R3-CD - Filed June 17, 2008

The Sevier County Grand Jury indicted Appellant, Tessa Sutton, for introduction of drugs into a penal institution. On January 29, 2007, she pled guilty to the charge and was sentenced to three years to be served on probation. Her probation officer filed a probation violation warrant alleging, among other things, that Appellant missed her initial intake appointment and tested positive for drugs. The trial court based its revocation of Appellant's probation upon these two grounds. We have reviewed the record and find ample support in the record for the trial court's conclusion. Therefore, the trial court did not abuse its discretion in revoking Appellant's probation. For this reason, we affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

Amber D. Haas, Sevierville, Tennessee, for the appellant, Tessa Leann Sutton

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilbur, Assistant Attorney General; Al Schmutzer, Jr., District Attorney General; and Jeremy D. Ball, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In June of 2006, Appellant was an inmate at the Sevier County Jail. While she was there, she received a methadone pill that she consumed. On September 20, 2006, the Sevier County Grand Jury indicted her for one count of introduction of contraband into a penal institution. On January 29, 2007, Appellant pled guilty as charged. She was sentenced to three years to be served on supervised probation, which was, in turn, ordered to be served consecutively to a sentence she was serving on probation at the time.

On April 3, 2007, Appellant's probation officer filed a probation violation warrant. In the warrant, the probation officer alleged five violations:

Rule #4: Subject failed to provide verification of employment or medical paperwork for disability.

Rule #6: Subject failed to report as directed for intake on 2/14/07 and on 2/21/07. Subject failed to report for A&D assessment on 3/19/07 as scheduled.

Rule #8: Subject tested positive for Cocaine, Marijuana, Opiates and Amphetamine on 2/22/07.

Rule #9: Subject failed to pay fees or court costs.

Rule #11: Subject failed to provide specimen for purpose of DNA analysis.

On June 5, 2007, the trial court held a probation revocation hearing. The probation officer testified to the following at the hearing:

On January 29, '07 subject pled guilty to introduction of drugs into a penal facility and received a sentence of three years. She was advised by phone and by letter to report for intake on February 14th, '07. She failed to report on that date. It was rescheduled. She failed to report again on February 21st. I called her on the 22nd and instructed her to report immediately, which she did. On February 22nd, she tested positive for cocaine, marijuana, opiates and amphetamines.

. . . .

In addition, if I may add, I had her set up for A and D assessment at two different places and they reported that she failed to report as scheduled on March 15 and March 29th.

The probation officer also testified that Appellant failed to verify employment or medical condition, pay fees or court costs or provide a specimen for DNA.

Appellant testified she did go to her alcohol and drug assessment, but the facility must have lost her paperwork. She admitted to missing her first appointment, but said she called to reschedule. Appellant also admitted to having taken drugs prior to her appointment. She said that she was in the process of trying to get into a rehabilitation program at that time.

At the conclusion of the hearing, the trial court found that Appellant was in willful violation of the conditions of her probation. The trial court specifically relied upon the fact that Appellant had missed her first appointment and that she used and possessed illegal drugs, particularly cocaine. Her

probation was revoked and she was ordered to serve her sentence. Appellant filed a timely notice of appeal, alleging as her sole issue that the trial court erred in revoking her probation.

ANALYSIS

A trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the person has violated a condition of probation. T.C.A. §§ 40-35-310 & -311. After finding a violation of probation and determining that probation should be revoked, a trial judge can: (1) order the defendant to serve the sentence in incarceration; (2) cause execution of the judgment as it was originally entered, or, in other words, begin the probationary sentence anew; or (3) extend the probationary period for up to two years. *See* T.C.A. §§ 40-35-308(c) & -311(e); *State v. Hunter*, 1 S.W.3d 643, 647-48 (Tenn. 1999). The decision to revoke probation rests within the sound discretion of the trial court. *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). Revocation of probation and a community corrections sentence is subject to an abuse of discretion standard of review, rather than a de novo standard. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). An abuse of discretion is shown if the record is devoid of substantial evidence to support the conclusion that a violation of probation has occurred. *Id.*

At the probation violation hearing, Appellant admitted to both missing her intake appointment and to using drugs which resulted in a drug test which showed the presence of cocaine, as well as other drugs. These were two of the violations alleged in the probation violation warrant, and the trial court based its revocation upon these two violations. The record amply supports the trial court's findings. Therefore, we conclude that the trial court did not abuse its discretion in revoking Appellant's probation.

Therefore, this issue is without merit.

CONCLUSION

For the foregoing reasons, we affirm the decision of the trial court.

JERRY L. SMITH, JUDGE